

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Fenkel	Team: Squad #11	CCRB Case #: 201508892	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 09/01/2014 5:26 AM	Location of Incident: 217 East Tremont Avenue; 46th Precinct stationhouse	Precinct: 46	18 Mo. SOL 3/1/2016	EO SOL 3/1/2016	
Date/Time CV Reported Fri, 10/09/2015 8:09 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/19/2015 7:37 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jacob Newman	19914	933090	046 PCT
2. An officer			046 PCT
3. Officers			046 PCT
4. POM Jose Floresfernandez	10906	951739	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Scott Monier	23049	942228	046 PCT
2. POM Ruben Cuesta	14469	946886	046 PCT
3. POM Elisha Duncan	03073	926793	046 PCT
4. POM Moises Rodriguez	08124	951164	046 PCT
5. POM Michael Simpson	01594	945007	046 PCT
6. POM Jason Santana	15369	951202	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: At 217 East Tremont Avenue in the Bronx, an officer used pepper spray against an individual.	
B. POM Jacob Newman	Force: At 217 East Tremont Avenue in the Bronx, Police Officer Jacob Newman used physical force against § 87(2)(b)	
C. POM Jacob Newman	Force: At 217 East Tremont Avenue in the Bronx, Police Officer Jacob Newman struck § 87(2)(b) with a baton.	
D. An officer	Force: At 217 East Tremont Avenue in the Bronx, an officer used physical force against § 87(2)(b) § 87(2)(b)	
E. Officers	Force: At 217 East Tremont Avenue in the Bronx, officers used physical force against § 87(2)(b)	
F. POM Jose Floresfernandez	Abuse: At the 46th Precinct stationhouse, Police Officer Jose Floresfernandez did not obtain medical treatment for § 87(2)(b)	

Case Summary

On October 9, 2015, SDS Patrick Romain of the Internal Affairs Bureau contacted the IAB Command Center to report that he received video footage from the Bronx District Attorney's Office depicting PO Jacob Newman of the 46th Precinct striking § 87(2)(b) numerous times with a baton. The complaint was received at the CCRB on October 19, 2015.

On September 1, 2014, at approximately 5:26 a.m., officers from the 46th Precinct arrived at El Divo Lounge, located at 217 East Tremont Avenue in the Bronx, and ordered everyone to leave. When § 87(2)(b) and his wife, § 87(2)(b) exited the lounge, § 87(2)(b) observed an unidentified individual lying face down on the ground in handcuffs. § 87(2)(b) believed the individual had been pepper sprayed because something in the air bothered his eyes (**Allegation A**). A crowd had formed in front of El Divo Lounge, and some people were recording the incident on their cell phones. § 87(2)(b) took out his cell phone and began recording.

Officers instructed the crowd of approximately six or seven individuals to back up. PO Newman approached § 87(2)(b) placed one hand on § 87(2)(b)'s chest, and forcefully pushed him (**Allegation B**). At the same time, PO Newman struck § 87(2)(b) with his baton on § 87(2)(b)'s left knee (**Allegation C**). PO Newman continued to push § 87(2)(b) who was still recording on his cell phone, and to strike § 87(2)(b) with the baton approximately four or five more times all over his body, including his knees, back, upper arms, torso, and head (**within Allegation C**).

Additional unidentified officers arrived and grabbed § 87(2)(b) by his left arm and legs. PO Newman continued to strike him with the baton (**within Allegation C**). § 87(2)(b) attempted to intervene by placing herself between § 87(2)(b) and PO Newman, and an unidentified officer pushed § 87(2)(b) back (**Allegation D**). Unidentified officers then threw § 87(2)(b) to the ground (**Allegation E**). § 87(2)(b) was arrested for resisting arrest and obstructing governmental administration (Board Review 01). § 87(2)(b) was not arrested or summonsed.

§ 87(2)(b) was transported to the 46th Precinct stationhouse by PO Ruben Cuesta and PO Jose Florez-Fernandez from that command. There, § 87(2)(b) informed PO Florez-Fernandez that he wanted to go to the hospital. PO Florez-Fernandez placed § 87(2)(b) inside a holding cell, and allegedly ignored § 87(2)(b)'s request for medical attention. (**Allegation F**).

The CCRB obtained two cell phone videos of the incident from IAB, which was recorded by § 87(2)(b) and an unidentified individual. SnagIt copies of the relevant portions have been placed below. The original footage is located in IAs #31 through #35 in the digital case file (Board Review 02, Board Review 03, Board Review 04, Board Review 05, Board Review 06), and summarized in IA #36 (Board Review 07).



201508892_20160425_1338_DM.mp4



201508892_20160425_1334A_DM.mp4

This case was delayed due to it being reported more than one year after the incident and subsequently being placed on DA hold. Further delay occurred due to difficulties with scheduling both civilians and officers. The statute of limitations on this case was March 1, 2016.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- § 87(2)(b) has filed a Notice of Claim with the City of New York (Board Review 08), claiming that officers committed negligence, false arrest, false imprisonment, the infliction of emotional distress, assault and battery, and caused him bodily injury. § 87(2)(b) is seeking \$500,000 in damages. A 50H hearing took place on § 87(2)(b) (Board Review 09), and relevant portions of the transcript are detailed throughout this report.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) and § 87(2)(b) (Board Review 12).
- PO Newman has been a member-of-the-service for 13 years and has had nine prior complaints filed against him involving 17 allegations. Though none of these allegations have been substantiated, eight of the 17 allegations involve complaints of excessive force, and in CCRB case #201115650, a physical force allegation involving the use of a baton was closed as exonerated (Board Review 13).
- PO Florez-Fernandez has been a member-of-the-service for four years. PO Florez-Fernandez has had one prior CCRB complaint filed against him for a refusal to obtain medical treatment allegation, which was closed as unsubstantiated (Board Review 14).

Potential Issues

- This case was reported to the CCRB 13 months after the incident date. § 87(2)(g)
[REDACTED]
[REDACTED]
- At the request of the Bronx District Attorney's Office, this case was placed on DA Hold from November 16, 2016 until March 2, 2016.

Findings and Recommendations

Explanation of Subject Officer Identification

In § 87(2)(b)'s CCRB interviews (Board Review 15, Board Review 16), he testified that he did not see the events leading up to the unidentified individual being pepper sprayed, nor did he see this individual get pepper sprayed. § 87(2)(b) was therefore unable to identify or describe the officers involved in this aspect of the incident. Aside from PO Florez-Fernandez, none of the officers interviewed acknowledged that pepper spray was used at the scene, and PO Florez-Fernandez was unable to recall which officer discharged the pepper spray. § 87(2)(g)

Neither § 87(2)(b) nor § 87(2)(b) (Board Review 17) could identify or provide detailed descriptions of the officer who pushed § 87(2)(b) or the officers who brought § 87(2)(b) to the ground. None of the officers interviewed acknowledged their participation in these actions, or could identify the officers involved. § 87(2)(g)

§ 87(2)(b) said that he requested medical treatment from a Spanish-speaking officer who transported him to the 46th Precinct stationhouse. In their CCRB interviews, PO Cuesta (Board Review 18) denied that he transported § 87(2)(b) from the scene, and PO Florez-Fernandez (Board Review 19) did not recall whether he transported § 87(2)(b). However, PO Cuesta and PO Florez-Fernandez confirmed they were partnered together during this incident and PO Cuesta's memo book contained an entry that he transported one arrested individual from the scene. PO Cuesta denied speaking Spanish, however, PO Florez-Fernandez acknowledged that he is a Spanish-speaker. § 87(2)(g)

Allegations not pleaded

§ 87(2)(g)

Allegation A – Force: At 217 East Tremont Avenue in the Bronx, an officer used pepper spray against an individual.

§ 87(2)(b) testified that upon exiting El Divo Lounge, he observed an unidentified individual handcuffed on the ground who had seemingly been pepper sprayed. § 87(2)(b) did not see anything that happened with this individual previously and his only indication that pepper spray had been expelled at the scene was that something in the air bothered his eyes. § 87(2)(b) corroborated that she observed the unidentified individual handcuffed on the ground too, but she made no mention of pepper spray.

PO Florez-Fernandez testified that while officers were present conducting crowd control (he did not know why officers initially responded to the scene), an unidentified individual was pepper sprayed by unidentified officers. PO Florez-Fernandez did not know whether the pepper sprayed individual was arrested. PO Newman (Board Review 20) and PO Cuesta corroborated that they observed unidentified officers handcuff an unidentified individual, but they did not recall the use of pepper spray at the scene.

A search of the NYPD's Booking, Arraignment, and Disposition System revealed negative results for any additional arrests at the location (Board Review 21) and due to the age of this case, Event documents were unavailable to the investigation § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation B – Force: At 217 East Tremont Avenue in the Bronx, Police Officer Jacob Newman used physical force against § 87(2)(b)

It is undisputed that PO Newman pushed § 87(2)(b) while attempting to disperse a crowd outside of a nightclub.

Video footage taken by § 87(2)(b) depicts numerous officers issuing commands to disperse a crowd of approximately 20 civilians, including § 87(2)(b) from the location. Despite numerous commands to disperse, § 87(2)(b) backs up a few inches, but remains in the immediate vicinity of the officers. PO Newman reaches towards § 87(2)(b) and § 87(2)(b) says “Don’t touch me. Don’t fucking touch me.” § 87(2)(b) then begins walking away from the scene.

In § 87(2)(b)'s CCRB statement, he said that officers instructed him and a crowd of approximately six or seven individuals who were recording on their cell phones to disperse from the location. § 87(2)(b) approximated he and the crowd were three feet from the officers at the time. § 87(2)(b) said that he and the other individuals complied with the officers' instructions to move back, and that he walked backwards while continuing to record on his cell phone. At this moment, without speaking, PO Newman appeared, placed one hand on § 87(2)(b)'s chest, and forcefully pushed him.

§ 87(2)(b) mostly corroborated § 87(2)(b)'s account of the circumstances leading up to the push, but she did not mention seeing PO Newman push § 87(2)(b). § 87(2)(b) testified that § 87(2)(b) recorded on his cell phone while standing approximately 10 feet away from the unidentified handcuffed individual on the ground. She said that officers gave orders for people to get back and § 87(2)(b) complied with these instructions.

PO Newman testified that a crowd of 15 to 20 patrons from El Divo Lounge, many of whom had their cell phones out, surrounded officers as they interacted with the unidentified handcuffed individual on the ground. PO Newman described that this crowd was within inches of the officers, and that § 87(2)(b) was part of the crowd. PO Newman ordered the crowd to move back multiple times while gesturing his arms in an outward motion as he feared that officers could be hurt due to the crowd's proximity. Overall, the crowd was unresponsive to PO Newman's instructions, including § 87(2)(b). PO Newman could not recall exactly how

his interaction with § 87(2)(b) started, though his intent was to get § 87(2)(b) to leave the location. PO Newman acknowledged moving § 87(2)(b) back by pushing him somewhere in his upper body. In response, § 87(2)(b) walked forward and reached over PO Newman to record on his cell phone. § 87(2)(b) never complied with PO Newman's orders to move back and only stepped back as a result of PO Newman's push, which forced § 87(2)(b) to walk backwards.

Neither PO Cuesta nor PO Florez-Fernandez acknowledged witnessing this aspect of the incident.

According to NYPD Patrol Guide, Procedure 203-11, an officer must use the minimum amount of force that is necessary to overcome resistance (Board Review 22).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation C – Force: At 217 East Tremont Avenue in the Bronx, Police Officer Jacob Newman struck § 87(2)(b) with a baton.

It is undisputed that PO Newman struck § 87(2)(b) numerous times with his baton.

The cell phone video taken by an unidentified individual depicts PO Newman striking § 87(2)(b) with his baton approximately 10 times. Over the course of 14 seconds, PO Newman strikes § 87(2)(b) two times in his torso area and once on his left leg as § 87(2)(b) holds his open-palmed hand in front of him, seemingly in an attempt to shield himself from the blows, and holds onto a railing with his other hand. Approximately four unidentified officers arrive and grab § 87(2)(b)'s arms and legs as PO Newman continues to inflict at least seven more baton strikes; one on § 87(2)(b)'s left arm, one on § 87(2)(b)'s left torso area, one on the left side of § 87(2)(b)'s head, near his ear, one on § 87(2)(b)'s left shoulder, one on § 87(2)(b)'s left arm, and two on § 87(2)(b)'s right leg. No officers are heard giving § 87(2)(b) any orders during this time.

§ 87(2)(b) estimated that PO Newman struck him with his baton approximately four or five times all over his body, and that in response § 87(2)(b) moved the crossbody bag he was wearing to protect the laptop inside from being damaged. As PO Newman held his baton in one hand, he grabbed § 87(2)(b) by his arm and shirt using his other hand. Consistent with the video footage, § 87(2)(b) said that additional officers grabbed § 87(2)(b) by his left arm and legs, and that PO Newman continued striking him with his baton all over his body, including his head, an unspecified number of times.

As a result of PO Newman's baton strikes, § 87(2)(b) said he sustained pain and swelling to his left knee, a mark across his back, and scrapes to his left shoulder. § 87(2)(b) did not sustain any injury as a result of the baton strike to the head, and his physical condition appears normal in his arrest photograph (Board Review 23). Upon his release from custody, § 87(2)(b) sought medical attention at § 87(2)(b). § 87(2)(b)

§ 87(2)(b)'s medical records confirm that he was treated for contusions and musculoskeletal pain sustained from the baton strikes. § 87(2)(b) was prescribed pain medication (Board Review 24).

PO Newman testified that at some point after he had pushed § 87(2)(b) although this is not visible on the video footage, § 87(2)(b) slapped him twice on his forearm. PO Newman considered § 87(2)(b) to be under arrest for harassment at this point, and attempted to grab § 87(2)(b)'s arms in order to handcuff him. He could not recall if he informed § 87(2)(b) that he was under arrest. § 87(2)(b) pulled away, so PO Newman utilized his baton. PO Newman did not recall whether § 87(2)(b) said anything to him at this point, or whether he gave § 87(2)(b) any additional orders during the course of the struggle, after the initial orders to move back.

PO Newman decided to use his baton because he did not want to physically grapple with § 87(2)(b) who was larger than him, and he did not want to use pepper spray and risk affecting the other civilians and officers in the area. PO Newman said he struck § 87(2)(b) with his baton "more than twice" in his "side flank" area. In response, § 87(2)(b) "ducked down" and "moved all over the place." PO Newman was unable to recall the exact number of baton strikes he inflicted on § 87(2)(b) nor could he recall if he struck § 87(2)(b) anywhere else on his body, but he did not believe he struck § 87(2)(b) on his head.

During his CCRB interview, PO Newman testified that at the 1:07 minute mark in the SnagIt video taken by the unidentified individual, although it is not visible, § 87(2)(b) grabbed onto his arm (after PO Newman had already begun striking him with his baton) and attempted to pull him down.

PO Cuesta denied seeing § 87(2)(b) slap PO Newman or make any physical contact with PO Newman, but said this was because he only began witnessing the encounter when PO Newman was already using his baton. PO Cuesta said that as PO Newman struck § 87(2)(b) with his baton, § 87(2)(b) held onto a nearby railing. PO Cuesta could not recall how many times PO Newman struck § 87(2)(b) with his baton. PO Newman appeared to strike § 87(2)(b) on the arms. PO Cuesta did not recall seeing PO Newman strike § 87(2)(b) anywhere else on his body.

PO Florez-Fernandez did not witness this portion of the incident.

According to NYPD Patrol Guide, Procedure 203-11, an officer must use the minimum amount of force that is necessary to overcome resistance.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)
[REDACTED]

Allegation D – Force: At 217 East Tremont Avenue in the Bronx, an officer used physical force against § 87(2)(b)

It is undisputed that an officer pushed § 87(2)(b) away from the scene when she attempted to physically interfere in the officers' interaction with § 87(2)(b).

The cell phone video taken by an unidentified individual depicts § 87(2)(b) running to § 87(2)(b) and the officers, and an unidentified officer grabbing her by her shoulder and pushing her away from the scene.

§ 87(2)(b) who sustained no injury as a result of the push, denied that she made physical contact with § 87(2)(b) or the officers. § 87(2)(b) did not witness this aspect of the incident firsthand.

According to NYPD Patrol Guide, Procedure 203-11, an officer must use the minimum amount of force necessary.

§ 87(2)(g)
[REDACTED]

Allegation E – Force: At 217 East Tremont Avenue, officers used physical force against § 87(2)(b)

It is undisputed that as PO Newman struck § 87(2)(b) with his baton, four to five unidentified officers approached and brought § 87(2)(b) to the ground.

The cell phone video taken by an unidentified individual depicts a partially obstructed view of this aspect of the incident, but shows § 87(2)(b)'s arms being held behind his back by unidentified officers in the moments leading up to them pushing him down to the ground.

According to § 87(2)(b) as he continued being struck by a baton, officers grabbed him by his arms and legs, and when he attempted to support himself by holding onto a nearby railing with his right arm, the officers “threw” him to the ground.

PO Newman said that § 87(2)(b) was brought to the ground because he pulled his arms back and flailed them, described as swinging them around, and that he was brought to the ground in order to be rear handcuffed. PO Cuesta testified that § 87(2)(b) was brought to the ground because he pulled his arms towards his chest as the officers attempted to rear handcuff him.

§ 87(2)(g)

Allegation F – Abuse of Authority: At the 46th Precinct stationhouse, Police Officer Jose Florez-Fernandez did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) was transported to the 46th Precinct stationhouse by PO Florez-Fernandez and PO Cuesta. There, in Spanish, § 87(2)(b) said he informed PO Florez-Fernandez that his shoulder hurt and that he wanted to go to the hospital. PO Florez-Fernandez, identified by the investigation, placed § 87(2)(b) inside a holding cell. § 87(2)(b) was never transported to the hospital.

PO Flores-Fernandez did not recall transporting § 87(2)(b) to the stationhouse, but he denied that he ever refused § 87(2)(b) medical treatment and he did not recall witnessing any injuries on § 87(2)(b). PO Cuesta, who does not speak Spanish, denied that PO Florez-Fernandez failed to provide medical attention to § 87(2)(b).

§ 87(2)(g)

Squad: #11

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date

